I. THE TENTH CIRCUIT PROPERLY FOUND THAT THE *ROOKER-FELDMAN* DOCTRINE DIVESTED IT OF JURISDICTION TO REVIEW THE STATE COURT'S JUDGMENT

The *Rooker-Feldman* doctrine is the result of two cases decided sixty years apart, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The proposition of the doctrine was recently clarified in *Exxon Mobil Corp. v Saudi Basic Industries Corp.*, 125 S.Ct. 1517 (2005). The doctrine divests a federal court of jurisdiction when the petitioner's claim would be a direct or collateral attack on a state court's judgment. The basis of this jurisdictional prohibition is statutory. Twenty-eight U.S.C. §1257 reserves review of state court decisions to this Court, whereas the jurisdiction of federal courts is strictly original. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). "Under 28 U.S.C. §1738, federal courts must give the same preclusive effect to a state-court judgment as another court of that State would give." *Exxon Mobil Corp. v Saudi Basic Industries Corp.*, 125 S.Ct. at 1521-22 (internal citations omitted). Thus, *Rooker-Feldman* is the proper doctrine to preclude review of a state court decision by a federal court when, as in this case, the state appellate court had entered a final judgment on the merits with no pending appeal. *See id.*

After the state court of appeals entered judgment on the merits, Petitioner sought review of those claims in federal court. This case falls within the now narrowed and clarified scope of *Rooker-Feldman*. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 125 S.Ct. 1517 (2005). *Exxon Mobil* clarified the applicable scope of the doctrine which had previously been "construed to extend far beyond the contours

of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738." *Id.* at 1521. *Exxon Mobil* delineates the scope of the *Rooker-Feldman* doctrine. Petitioner's assertion that the circuit courts remain divided is overreaching and loses sight of the relief sought by this Petitioner. Petitioner acknowledged at the extensive hearing before the Board that he had a mixed personality disorder and mental illness. Petitioner attempted to use his psychological condition as an excuse for his conduct. He asked the Board to accommodate his illness by allowing him to retain his license. The Board, based on all the evidence, found that he was a threat to the public and that the Board could not accommodate his mental illness. Clearly, Petitioner lost his claim that he could safely practice medicine. The Board's decision was affirmed by two New Mexico Courts before filing his complaint in federal court. Petitioner seeks to persuade another forum using the same argument that he can safely practice medicine. *Rooker-Feldman* bars Petitioner's attempt to get another swing at the place at a new ballpark and it removes the bat from Petitioner as he already has had four strikes at the plate in the previous ballparks.

Petitioner's license was revoked by the Board. Petitioner then appealed the revocation in state district court and argued he had a claim for violation of the ADA. The state district court affirmed the revocation of Petitioner's medical license and further found that Petitioner did not preserve his claim under the ADA and dismissed the ADA claim. It was the dismissal of Petitioner's state court appeals that prompted Petitioner to file the federal court action. In filing the federal court action complaining violation of his rights under the

ADA, Petitioner attempted an "end-run" around the state appellate court's decision. The decision of the state court, erroneous or not, is not actionable in federal court. *Long v. Shorebank Development Corp.*, 182 F.3d 548, 554-55 (7th Cir. 1999) (stating where the acts of defendants, including fraud, precluded the plaintiff from raising a defense or any claims on her behalf and were thus not precluded under *Rooker-Feldman*). Petitioner is seeking federal review of a state court judgment and requesting the federal court reject the state's revocation of his license.

Exxon Mobil does not shed new light as this case fits squarely within the *Rooker-Feldman* doctrine as expressed by this Court. The Tenth Circuit's decision should be affirmed as this is a case "brought by [a] state-court loser[] complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."

II. PETITIONER WAS NOT DENIED A REASONABLE OPPORTUNITY TO RAISE HIS ADA CLAIMS BUT FAILED TO PROPERLY FOLLOW APPELLATE PROCEDURES

Petitioner's contention that he must be afforded a full and fair opportunity to litigate his claims not only blurs the distinction between *Rooker-Feldman* and the preclusion doctrines, but also amounts to eviscerating the "inextricably intertwined" analysis of the *Rooker-Feldman* doctrine. The elimination of the "inextricably intertwined" analysis ultimately results in the ability of a federal court to not only review a state court's decision but overturn a judgment in violation of the full faith and credit clause.

Petitioner attempts to first categorize the decisions of the circuit courts into those that require a full and fair opportunity to litigate claims, which includes the Ninth and Tenth Circuits, and those which require that the claims be fully and fairly litigated in state court before barring federal court's jurisdiction. Regardless of whether the categorization is correct, this case is not one where resolution of the conflict is necessary. Petitioners' mental illness and the inability to make reasonable accommodations was litigated in the administrative proceeding. Medical evidence was presented establishing Petitioner's mental disorder. In fact, the Board appointed a panel of physicians to examine and evaluate Petitioner. Thereafter, the Board reviewed the evidence of his mental disorder. In addition to the Petitioner's mental disorder, the Board made specific findings that the Petitioner was dishonest to the Board Examiners. Subsequently on appeal, Petitioner had the opportunity to raise and in fact did raise his ADA claim in state court. When the claim was dismissed, instead of following the proper appellate procedure of first seeking relief from the revocation of his license in the New Mexico Supreme Court, after being denied relief by the New Mexico Court of Appeals, and then applying for a writ of certiorari from this Court if he was still denied relief, Petitioner inappropriately filed a claim in federal court. Thus, Petitioner did raise his ADA claim, even though the court found he did not properly preserve the issue. Petitioner cannot now file an action in federal court if he failed to preserve the issue in state court.

Review of the circuit court decisions cited by Petitioner reveals that the facts of each case do not permit for such simple categorizations. A court cannot just simply look at the issues raised in determining whether jurisdiction is barred under *Rooker-Feldman*; A court must also look at the relief

sought. This Court originally articulated the *Rooker-Feldman* doctrine stating,

> If the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application, then the District Court is in essence being called upon to review the state court decision. This the District Court may not do.

D.C.Court of Appeals v. Feldman, 460 U.S. 462, 483 n. 16 (1983). This Court further stated that the doctrine precluded the United States District Court from hearing challenges to state court decision, even if those challenges allege that the decision of the state court was unconstitutional. *Id.* at 486. *Feldman* did not limit the use of the doctrine simply to review of claims or issues, but rather the relief sought and the result on the decision rendered in state court. If a court only looks to the issues or claims raised as done for preclusion doctrines, the line between *res judicata*, collateral estoppel and *Rooker-Feldman* become blurred. *Bianchi v. Rylaarsdam*, 344 F.3d 895, 900 (9th Cir. 2003).

If a claim has been raised in state court with jurisdiction over the matter, the proper procedure is to exhaust state court remedies and then appeal to this Court. If however, the issue has not been raise in state court and is not inextricably intertwined with the state court judgment, the federal court has jurisdiction to hear the matter. In this case, Petitioner sought accommodation from the Board for his psychologic disorder. After considering all the evidence and expert and lay testimony at trial, the Board determined that his behavior could not be accommodated. The Board found that

Petitioner's prior psychological treatment had been unsuccessful and he still posed a threat to the safety of his patients, his employees, his colleagues, and the general public. He appealed to the state district court. The state district court affirmed the Board's decision. He appealed to the New Mexico Court of Appeals, which affirmed the district court. Petitioner now seeks to have the federal court overturn these findings of fact and compel the Board to accommodate his mental illness. Petitioner should have appealed this allegedly erroneous dismissal to the state supreme court and then to this Court instead of doing an "end-run" in federal court in hopes of overturning the state court decision.

The conflict that Petitioner claims exists among the circuits is tangential to the facts of this case. Petitioner raised his ADA claim during the hearing before the Board and then again in state court. The state district court found that Petitioner did not preserve his appeal regarding his ADA claim. Petitioner appealed the court's ruling and in fact appealed an issue which was supported by substantial evidence. Moreover, under the ADA, in order for the worker to have a claim, the worker must be able to work with no or with reasonable accommodations. The Board made specific findings, which were affirmed on appeal, that no treatment would help change Petitioner's behavior, could not be monitored and therefore Petitioner could not continue to work. Thus, there was no viable claim under the ADA because there were no reasonable accommodations available. The Board found Petitioner posed a threat to the community and public. Petitioner's claim that he did not litigate or have the opportunity to litigate his claim is without merit.

III. THE ALLEGED DIVISION OF THE CIRCUIT COURTS IS TANGENTIAL TO THE FACTS OF THIS CASE

The *Rooker-Feldman* doctrine bars federal jurisdiction for two categories of claims: 1) those actually decided by a state court or 2) those which are "inextricably intertwined" with a state court judgment. *Pittsburgh County Rural Water District No. 7 v. City of McAlester*, 358 F.3d 694 (10th Cir. 2004). Petitioner's claims meet the requirement of both categories such that this case should be dismissed for lack of subject matter. As both categories are met by the facts of this case, this Court does not need to reach the alleged division of the circuits regarding whether jurisdiction is barred when the challenge is not a result of the state court's action or whether it is a result of defendant's actions.

This appeal amounts to a direct review of the Board of Medical Examiners' findings and the New Mexico state court's decision which upheld the revocation of Petitioner's license as he was found to be a threat to the safety of his patients, employees and colleagues. The Board made specific findings that his mental illness could not be accommodated to protect the public from his aberrant behavior. C.A. App. 23. Petitioner argued his ADA claims throughout his appeal in the state court forum. On appeal, Petitioner presented twelve letters to the Board on his behalf regarding his psychiatric condition and accommodations. The dismissal of Petitioner's claims for relief is what prompted Petitioner filing suit in federal court. Thus, any review of this matter by the federal court would be a direct review of the New Mexico State Court decisions.

Petitioner's claims are also "inextricably intertwined"with those of the state court claim decision. The Tenth Circuit upholds the proposition that Petitioner advocates; A case is "inextricably intertwined" if the "state-court judgment *caused*, actually and proximately, the *injury* for which the federal-court plaintiff seeks *redress*." *Kenmen Eng'g v. City of Union*, 314 F.3d 468, 476 (10th Cir. 2002) (emphasis in original).

Petitioner seeks reinstatement of his medical license, which is the same relief requested from the Board and denied by the Board and the New Mexico State Courts. The revocation was not based solely on Petitioner's mental condition. The Board found that his dishonesty in addition to his abusive and disruptive behavior, was unbecoming a licensed physician. The revocation was based on two separate findings. Whether Petitioner is entitled to damages, including the reinstatement of his license to practice medicine would clearly require a review of the New Mexico state court decisions. These claims are "inextricably intertwined" such that the relief sought in federal court is exactly the same relief that Petitioner sought in state court. Petitioner's federal court claim is nothing more than a recasting of his ADA claims, which were addressed in the administrative proceedings and later dismissed for his failure to preserve those claims in state district court. Moreover, Petitioner sought review of the rulings of the New Mexico State Courts after a final judgment was entered by the New Mexico Court of Appeals, but before appealing to the New Mexico Supreme Court. The litigation in the state and federal courts was not parallel, but the relief was.

IV. UNDER THE FACTS OF THIS CASE, A FEDERAL CHALLENGE TO THE DECISION OF THE BOARD OF MEDICAL EXAMINERS IS INEXTRICABLY INTERTWINED WITH THE STATE COURT'S RULING

As previously stated, this Court acknowledges that the *Rooker-Feldman* doctrine has been construed by various circuits to "extend far beyond the contours of the *Rooker* and *Feldman* cases." This Court then clarified and provided guidance as to the proper application of the doctrine and stated that *Rooker-Feldman* only applied to cases, such as this, where a "state-court loser complaining of injured caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgements." Thus, under this guidance, the Petitioner must be a state-court loser, that the injury was caused by a state-court judgment, that the state court judgment was rendered before the district court proceedings commenced and finally that the district court review would result in rejection of the state court judgment. In this case, Petitioner lost his appeal to the New Mexico State Court from the administrative agency seeking reinstatement of his medical license. The state district court affirmed revocation of his medical license and affirmed his psychological disorder could not be accommodated. The judgment of the state district court and the New Mexico Court of Appeals was entered prior to Petitioner filing for review of the inability of the Board to accommodate his mental illness under the ADA. If the federal court were to review the state district court and find that Petitioner should be accommodated, it would result in rejecting the state court judgment affirming the revocation of his license and the inability to accommodate him.

The alleged chasm between the circuits is an overly broad statement and seems to ignore the factual basis underlying this case. The facts show that the relief requested is "inextricably intertwined" as a determination of whether the Board and subsequent appellate review of the revocation and inability by the Board to accommodate Petitioner's mental illness to insure the safety of his patients, employees, colleagues, and the general public was proper. Petitioner alleges that the New Mexico Courts inappropriately reviewed and subsequently adjudicated his claims. This is exactly what *Rooker-Feldman* is intended to prevent. Under NMSA 1978 § 39-3-1.1 (1998), the state district court reviews the agency decision to determine whether the decision was arbitrary, capricious, or not supported by substantial evidence. If the state district court so finds that the agency's determination was improper under those guidelines, it may overturn the agency decision. In this case, as Petitioner asserts, the state district court did in fact find, based on substantial evidence the Board's revocation and inability to accommodate Petitioner's mental illness was not arbitrary or capricious. In effect, Petitioner asserts that he was entitled to a trial *de novo*, which is not in accordance with New Mexico law. Petitioner fails to recognize that he did argue that he was entitled to accommodation at the administrative hearing, but medical testimony showed his mental illness could not be accommodate. Petitioner also fails to acknowledge that he did raise his same ADA claims in his appeal and fully argued the merits of those claims in his statement of appellate issues. Plaintiff was not prevented from seeking accommodation within the state judicial framework, and in fact argued accommodation before the Board and on appeal. He was did not receive relief from the state district court's ruling, which affirmed the revocation of his license. However, the state court could have reinstated his license requiring the Board

to at least attempt to accommodate Plaintiff. The Board found and the state court affirmed that Petitioner could not be accommodated. If the federal court is entitled to hear Petitioner's ADA claim, it in effect is not only reviewing the Board's decision but the state district court's review and affirmation of the Board's decision such that the relief Petitioner is requesting is "inextricably intertwined."

The cases cited by Petitioner also lend little support to the alleged chasm between the circuits. In *Parkview Associates Partnership v. City of Lebanon*, 255 F.3d 321 (3d Cir. 2000), the court found that *Rooker-Feldman* was inapplicable because the plaintiff had not raised the claims before in any state judicial forum. The court stated that federal review would not require a determination that the state court was wrong. Additionally, the state appellate court was able to take new evidence on appeal and was not limited strictly to a review of the record below. In *Sheehan v. Marr*, 207 F.3d 35 (1st Cir. 2000), the court found the *Rooker-Feldman* doctrine inapplicable because the complaint filed in federal court was completely separate from the allegations brought in front of the Board. Moreover, the Plaintiff demonstrated that the Board could not hear discrimination claims and therefore could not appeal those claims to the state court. In this case, review of Petitioner's ADA claim would require review and determination that the state district court, and subsequently the New Mexico Court of Appeals, was incorrect in affirming the Board's decision to revoke Petitioner's license and inability to accommodate Petitioner's mental illness. This is a state-law question bearing on important New Mexico Board of Medical Examiner's requisites and New Mexico policy questions that require a coherent state policy to insure the medical profession maintains a standard of care that Petitioner is unable to meet.

CONCLUSION

The petition for write of certiorari should be denied, the judgment below affirmed, and the case dismissed as *Exxon Mobil* provided adequate guidance to the federal courts in the application of the *Rooker-Feldman* doctrine. The court should not grant certiorari as plenary review is not needed.

Respectfully submitted,

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No. 04-1667

Supreme Court, U.S.
FILED
AUG 22 2005
OFFICE OF THE CLERK

In The

Supreme Court of the United States

STUART T. GUTTMAN, M.D.,

Petitioner,

v.

G.T.S. KHALSA, LIVINGSTON PARSONS and THE STATE OF NEW MEXICO,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

REPLY TO BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES i

INTRODUCTION .....

I. THE COURT OF APPEALS' JUDGMENT CANNOT BE SQUARED WITH *EXXON MOBIL* 1

II. THIS CASE IMPLICATES THREE DISTINCT CONFLICTS IN THE CIRCUITS 3

A. The Reasonable-Opportunity-to-Litigate Conflict 3

B. The State-Courts-Failed-to-Provide-Relief Conflict 5

C. The Substantial-Evidence Conflict 6

CONCLUSION 8

TABLE OF AUTHORITIES

CASES

Beard v. Banks, 125 S.Ct. 2504 (2004) 3

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) ..... *passim*

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 125 S.Ct. 1517 (2005) 1, 2, 3, 4, 8

Kougasian v. TMSL, Inc., 359 F.3d 1136 (9th Cir. 2004) 5

Parkview Associates Partnership v. City of Lebanon, 225 F.3d 321 (3d Cir. 2000) 6

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) ..... *passim*

Sheehan v. Marr, 207 F.3d 35 (1st Cir. 2000) 6

Verizon Maryland, Inc. v. Public Serv. Comm'n, 535 U.S. 635 (2002) 7

REPLY TO BRIEF IN OPPOSITION

For the reasons stated in our petition for certiorari, the court of appeals' judgment is inconsistent with this Court's decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 125 S. Ct. 1517 (2005), which was issued after the court of appeals ruled. This case also implicates three persistent conflicts in the circuits regarding the application of the *Rooker-Feldman* doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Nothing in Respondents' brief in opposition undermines those key points. Accordingly, this Court should grant, vacate, and remand in light of *Exxon Mobil* or, failing that, simply grant the petition for certiorari outright.

I. The Court of Appeals' Judgment Cannot be Squared With *Exxon Mobil*

As we detailed in our petition for certiorari, Pet. 3-4, Dr. Guttman filed his complaint in federal court on April 17, 2003. The state-court proceedings in this case did not conclude until nearly one month later, on May 16, 2003, when the New Mexico Supreme Court denied review. *See* Pet. App. 26.[1] Accordingly, this case does not fit the "narrow" circumstances in which the *Rooker-Feldman* doctrine applies, *Exxon Mobil*, 125 S. Ct. at 1522: cases in which "the losing party in state court filed suit in federal court *after the state proceedings ended*, complaining of an injury caused by the state-court judgment and seeking review

[1] Both the petition (at 4) and the brief in opposition (at 4) refer to the state supreme court's order as being issued on May 21. That was the date on which counsel received the order, but the order itself is dated as of May 16. *See* Pet. App. 26.

and rejection of that judgment." *Id.* at 1526 (emphasis added). Because the state-court proceedings were still ongoing at the time Dr. Guttman filed his complaint in federal court, *Rooker-Feldman* did not bar the district court from entertaining that complaint. *See id.* at 1526-1527 (no jurisdictional bar to parallel state and federal proceedings). And the final "entry of judgment in the state court" did not operate to terminate the district court's jurisdiction. *Id.* at 1527.

Attempting to sidestep *Exxon Mobil*, Respondents disingenuously assert that "[t]his is not a case . . . where a plaintiff initiated federal litigation before the conclusion of the state court proceedings." Brief in Opp. 6. But Respondents do not dispute the fact that the state-court proceedings did not "conclu[de]" until over one month after Dr. Guttman filed his federal-court complaint. Respondents appear to rely on the irrelevant fact that, on the day Dr. Guttman filed his federal-court complaint, the New Mexico Court of Appeals had ruled against him and he had not yet filed his petition for review with the New Mexico Supreme Court. *See id.* ("Petitioner initiated the cause of action in federal court fourteen days after final order of the New Mexico *Court of Appeals* was entered.") (emphasis added); *id.* at 8 (describing this as a case in which "the state *appellate court* had entered a final judgment on the merits with no pending appeal") (emphasis added).

As Respondents appear to concede, however, the time to seek discretionary review in the New Mexico Supreme Court had not yet run at the time Dr. Guttman filed his federal-court complaint; he timely filed a petition for

discretionary review four days later. *See id.* at 4.[2] Accordingly, the mere fact that Dr. Guttman had not *yet* filed his petition for review did not bring the state-court proceedings to a "conclusion." *Cf. Beard v. Banks*, 125 S. Ct. 2504, 2511 (2004) (state conviction becomes "final" only after, at a minimum, "the availability of direct appeal to the state courts has been exhausted") (internal quotation marks omitted). It simply makes no sense to suggest that Dr. Guttman's federal-court action was barred by *Rooker-Feldman* because it was filed on April 17, but that the federal courts would have had jurisdiction if the case had been filed four days *later*.

The judgment of the court of appeals is thus directly in conflict with *Exxon Mobil*. If *Exxon Mobil* had been available at the time the court of appeals ruled, the court of appeals could not have held that the *Rooker-Feldman* doctrine applies here. Accordingly, the Court should grant the writ of certiorari, vacate the judgment, and remand for further consideration.

II. This Case Implicates Three Distinct Conflicts in the Circuits

A. The Reasonable-Opportunity-to-Litigate Conflict

As we showed in our petition for certiorari, there is an abiding conflict in the circuits regarding whether *Rooker-Feldman* bars a federal-court action when the plaintiff had

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[2] *Before* he filed his federal-court complaint, Dr. Guttman had filed an untimely request for discretionary review in the New Mexico Court of Appeals; that court excused the default and considered his request "as if it were timely." Pet. App. 24.

no reasonable opportunity to litigate his claims in state court. The Tenth Circuit, in cases decided both before and after *Exxon Mobil*, has held that *Rooker-Feldman* applies even in cases where the plaintiff lacked a reasonable opportunity to litigate. At least six other circuits disagree. *See* Pet. 10-16.

Respondents do not deny the existence of this conflict in the circuits. They merely contend that Dr. Guttman did have an opportunity to litigate his claims in state court. *See* Br. in Opp. 13. But the simple fact is that *no* court – state or federal – has ever entertained Dr. Guttman's ADA claim on the merits. Dr. Guttman raised that claim in his first complaint in the state trial court, but that court held that he had failed to preserve the issue by not asserting an ADA claim before the state Board of Medical Examiners. Pet. App. 28. But nothing in the ADA requires exhaustion of state administrative remedies. And Dr. Guttman's ADA claim did not even ripen until the Board issued its decision revoking his medical license without granting him the accommodations he sought.

In these circumstances, it is a stretch to say that Dr. Guttman had *any* opportunity to litigate his ADA claim in state court – much less a full and fair opportunity to litigate that claim. Indeed, the facts here are quite similar to those in cases in which appellate courts outside of the Tenth Circuit that *Rooker-Feldman* inapplicable because the plaintiffs had been denied a reasonable opportunity to litigate in state court. *See* Pet. 14-15. This case thus directly implicates the conflict in the circuits.

B. The State-Courts-Failed-to-Provide-Relief Conflict

As we demonstrated in our petition for certiorari, Pet. 18-21, there is also an abiding conflict over whether the *Rooker-Feldman* doctrine applies to a case like this one, where the plaintiff does not directly challenge a state-court order but instead challenges an action of the defendant for which the state courts failed to afford relief. As exemplified by its decision in this case, the Tenth Circuit holds that the doctrine bars federal jurisdiction whenever the federal-court suit seeks essentially the same relief that the plaintiff unsuccessfully sought in state court. *See* Pet. App. 8-9. Three other circuits agree. *See* Pet. 18-19. But the Seventh and Ninth Circuits have held that the *Rooker-Feldman* doctrine is inapplicable in cases where the plaintiff does not "allege legal errors by the state courts" but instead "allege[s] wrongful acts by the defendants" – even if the plaintiff unsuccessfully sought similar relief in state court. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1142 (9th Cir. 2004) (W. Fletcher, J.); *see* Pet. 19-21 & n.3 (collecting cases).

Respondents do not deny the existence of that conflict in the circuits. They contend that the conflict is "tangential" to this case, Br. in Opp. 14, but in attempting to defend the Tenth Circuit's judgment on the Tenth Circuit's terms, they unwittingly highlight the conflict's importance to this case. Respondents argue that the court of appeals was correct to apply *Rooker-Feldman*, because "the relief sought in federal court is exactly the same relief that Petitioner sought in state court." *Id.* at 15. But in the Seventh and Ninth Circuits, the mere fact that Dr. Guttman sought the same relief in federal court as he had sought in state court would not be enough to trigger the

Rooker-Feldman bar. Had this case arisen in one of those circuits, Dr. Guttman's claims would not have been dismissed on *Rooker-Feldman* grounds, for Dr. Guttman's claim against the Board would have been exactly the same even if there had been no state-court proceedings.

C. The Substantial-Evidence Conflict

As we showed in our petition for certiorari, at least two other circuits have refused to apply the *Rooker-Feldman* doctrine in cases like this one, where the state-court proceedings simply engaged in substantial-evidence or arbitrary-and-capricious review of state administrative action. *See* Pet. 25-27. Those courts have held that federal claims are not "inextricably intertwined" with such proceedings, because the state administrative decision might have violated federal law without being arbitrary and capricious or lacking substantial evidence. *See Parkview Associates Partnership v. City of Lebanon*, 225 F.3d 321, 326 (3d Cir. 2000) (to decide federal challenge to zoning board's action, federal courts "would not have to review the state courts' determinations that the Board's decisions were supported by substantial evidence in the record"); *Sheehan v. Marr*, 207 F.3d 35, 40 (1st Cir. 2000) (plaintiff's "ADA claim cannot be regarded as inextricably intertwined with the state court's involuntary retirement decision" that reviewed state administrative agency's action for substantial evidence, because the case was not one in which "the federal claim succeeds only to the extent that the state court wrongly decided the issues before it"). In the decision below, by contrast, the Tenth Circuit ruled that Dr. Guttman's federal claims were "inextricably intertwined" with his earlier state-court judicial review proceeding – and thus barred by *Rooker-Feldman* – even

though that proceeding engaged in deferential substantial-evidence/arbitrary-and-capricious review. Pet. App. 9-10.

Respondents say nothing that diminishes the conflict between the decision below and the earlier decisions of the First and Third Circuits. Nor do they show that the conflict is immaterial to this case. To the contrary, Respondents acknowledge that Dr. Guttman's federal claim seeks "a trial *de novo*, which is not in accordance with New Mexico law." Br. in Opp. 17. Because Dr. Guttman seeks *de novo* review of the question whether the Board's decision violated the ADA – review that the deferential state-court judicial-review proceedings did not afford him – *Rooker-Feldman* would not have applied to his case if it had arisen in the First or Third Circuits.[3] The conflict was thus decisive to Dr. Guttman's case.

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[3] It bears repeating that state administrative proceedings cannot themselves bar subsequent federal-court jurisdiction under *Rooker-Feldman*. *See Verizon Maryland, Inc. v. Public Serv. Comm'n*, 535 U.S. 635, 644 n.3 (2002).

CONCLUSION

For the foregoing reasons and those stated in our petition for certiorari, the petition for writ of certiorari should be granted, the judgment below vacated, and the case remanded for further consideration in light of *Exxon Mobil*, *supra*. If the Court does not follow that course, it should grant certiorari and set the case for plenary review.

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